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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. [redacted] 35

ASBURY HOSPITAL, A CORPORATION,
Appellant,

vs.

CASS COUNTY, NORTH DAKOTA, A PUBLIC CORPORATION, R. F. CROAL, AS STATE'S ATTORNEY OF CASS COUNTY, NORTH DAKOTA, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF NORTH DAKOTA

STATEMENT AS TO JURISDICTION

PAUL J. THOMPSON,
ABBOTT L. FLETCHER,
HERBERT G. NILLES,
L. H. OEHLERT,
JOHN J. NILLES,
Counsel for Appellant.

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IN

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 927

ASBURY HOSPITAL, A CORPORATION,
Plaintiff and Appellant,

vs.

CASS COUNTY, NORTH DAKOTA, A PUBLIC CORPORATION; R. F. CROAL, AS STATE'S ATTORNEY OF CASS COUNTY, NORTH DAKOTA, AND HIS SUCCESSORS IN OFFICE; AND ALVIN C. STRUTZ, AS ATTORNEY GENERAL OF THE STATE OF NORTH DAKOTA, AND HIS SUCCESSORS IN OFFICE,
Defendants and Appellees.

JURISDICTIONAL STATEMENT

Comes now Asbury Hospital, a corporation, the petitioner and appellant herein, pursuant to Rule 12 of the Rules of the Supreme Court of the United States, and in support of its petition for an appeal to the Supreme Court of the United States from the Supreme Court of the State of North Dakota in the above entitled cause, and states as follows:

I

Jurisdiction of this appeal is sustained by Sec. 237 (a) of the Judicial Code of the United States, also cited as Sec. 344 (a) of Title 28 of the United States Code Annotated.

II

The validity of the Initiative Measure adopted in North Dakota on June 29, 1932, entitled "An Act prohibiting corporation farming and relating to corporations acquiring and holding real estate not necessary in the operation of their business," is involved. This Initiative Measure is found and cited in the North Dakota Session Laws for 1933, pages 494 and 495, as amended by Chapter 89 of the North Dakota Session Laws for 1933, and as further amended by Chapter 111 of the North Dakota Session Laws for 1935. Such Initiative Measure is set forth verbatim in Paragraph VI hereof. The final decision and judgment of the Supreme Court of North Dakota, the highest court of the State of North Dakota, was in favor of the validity of such Initiative Measure, notwithstanding the contention of the appellant that such legislation is violative of appellant's constitutional rights under and is repugnant to the Fourteenth Amendment, Article 1 Section 10, Article 4 Section 2 and the Fifth Amendment to the Constitution of the United States.

III

The final decision and judgment of the Supreme Court of the State of North Dakota was made and entered on November 3, 1944 (R. 24), and the application for this appeal is presented on January 9th, 1945. (R. 25)

IV

This case originated in the District Court of Cass County, North Dakota, and no state question was raised or decided

adequate to sustain such decision and judgment of the Supreme Court of the State of North Dakota, if said judgment and decision are erroneous on the questions of Federal constitutional law raised by the appellant in its amended Complaint for a declaratory judgment, and which questions have been maintained by the appellant, and have been adversely decided to the appellant's contentions. Said judgment of the Supreme Court of the State of North Dakota was a final and complete judgment in favor of the validity of such Initiative Measure and amendments thereto, and unless reversed by the Supreme Court of the United States, nothing remains or can be done to protect the constitutional rights of the appellant, and such judgment cannot be reversed, annulled, modified or corrected except upon review by the Supreme Court of the United States.

V

Appellant relies upon the following statutes and cases to sustain the jurisdiction of the Supreme Court of the United States in this cause:

(a) This action was brought under the Uniform Declaratory Judgments Act of the State of North Dakota, being and cited as Chapter 237 of the North Dakota Session Laws for 1923, also cited as Sections 7712a1 to 7712a16 of the 1925 Supplement to the North Dakota Compiled Laws for 1913. In a former appeal involving an order sustaining a demurrer to the amended Complaint in this cause, the Supreme Court of North Dakota held that, whether such Initiative Measure is valid under the United States constitutional provisions heretofore mentioned, is a controversy properly determinable under such Declaratory Judgments Act. See *Asbury Hospital* v. *Cass County, et al.*, 72 N.D. 359, 7 N. W.(2d) 438, and also same case, — N. D. —, 16 N.W. (2d) 513, both opinions as referred to in Paragraph

VI and copies of which are attached to this statement of the jurisdiction. (R. 43 and 71) In this connection, it should also be noted that it has already been held in the case of *Nashville C. & St. L. Ry. Co.* v. *Wallace* (1933) 288 U. S. 249, 77 L. Ed. 730, that the Supreme Court of the United States has jurisdiction to review a declaratory judgment such as is here involved.

(b) The main contentions of the appellant in this case and in this appeal under the Federal constitutional provisions heretofore cited are, that the Initiative Measure in question deprives the appellant of its property and vested rights in real property acquired before such Initiative Measure became effective without due process of law; that the implied contract existing between the appellant and the State of North Dakota is impaired; that such Initiative Measure is also invalid because it discriminates unlawfully between corporations, and does not afford appellant equal protection under the laws. (R. 31) Appellant contends that it became the owner in fee simple of the land in question before such legislation was passed; it became the owner with the permission of the State of North Dakota; its rights as owner entitled it not only to the land, but it became possessed of all the incidents of ownership, including the right to determine when, or how, or to whom, or for what price, it might elect to sell the land; its rights in the property were fully vested before the challenged legislation was passed; the application of this legislation to this land and the escheat of the land and its forced sale takes its property without due process of law; it requires a sale independently of the consent of the owner; the legislation deprives the owner of its use during the escheat period; and no provision is made for a review by legal or other proceedings of a sale made by the county; the legislation was not passed as an exercise of the police power, nor did

the courts of North Dakota attempt to sustain it upon that ground. The State, under the guise of corporate regulation, cannot take property without due process of law. Appellant also contends that when the State of North Dakota permitted appellant to acquire this real estate with no restrictions or conditions attached to its ownership, an implied contract came into existence which is unconstitutionally impaired by the application of this legislation to it. Appellant further contends that such legislation discriminates unlawfully between corporations, and denies appellant the equal protection of the laws because certain classes of corporations are held to be exempt from the operation of the law. Appellant was in fact within the state within the meaning of the Constitution because it owned land here, and was thus subject to the State's authority, and in any event, it was not required to, nor was any provision made whereby it might, qualify as a foreign corporation. (R. 31) The statutes of North Dakota relating to foreign corporations have no application to corporations owning lands acquired through mortgage foreclosures, nor to non-profit corporations. (See Chap. 99 of North Dakota Session Laws for 1929, and see also Chap. 116 of North Dakota Session Laws for 1937.)

Appellant relies upon the following cases to show that a substantial Federal question is presented:

Buchanan v. *Warley*, 245 U. S. 60, 62 L. Ed. 149;
Shields v. *Ohio*, 95 U. S. 319, 24 L. Ed. 357;
The Boston Beer Co v. *Massachusetts*, 97 U. S. 25; 24 L. Ed. 989;
Union Pac. Railroad Co. v. *United States*, 99 U. S. 700, 25 L. Ed. 496;
Greenwood v. *Union Freight Railroad Co.*, 105 U. S. 13, 26 L. Ed. 961;

Lake Shore Railway Co. v. *Smith*, 173 U. S. 684, 43 L. Ed. 858;

Adirondack Ry. Co. v. *New York*, 176 U. S. 335, 44 L. Ed. 492;

Missouri Pacific R. Co. v. *Nebraska*, 164 U. S. 403, 41 L. Ed. 489;

Fair Haven & Westville Ry. Co. v. *New Haven*, 203 U. S. 379, 51 L. Ed. 237;

Sears v. *Akron*, 246 U. S. 242, 62 L. Ed. 688;

Coombes v. *Getz*, 285 U. S. 434, 76 L. Ed. 866;

Phillips v. *Jenkins*, 297 U. S. 629, 80 L. Ed. 943;

Western Union Telegraph Co. v. *Kansas*, 216 U. S. 1, 54 L. Ed. 355;

Chicago, M. & St. Pac. R. Co. v. *Wisconsin*, 238 U. S. 491, 59 L. Ed. 1423;

Herndon v. *Chicago Rock Island Pac. Ry. Co.*, 218 U. S. 135, 54 L. Ed. 970;

Seaboard Air Line Ry. Co. v. *Railroad Commission*, 155 Fed. 792;

St. Louis & S. F. Ry. Co. v. *Cross*, 171 Fed. 480;

Connolly v. *Union Sewer Pipe Co.*, 184 U. S. 540, 46 L. Ed. 679;

Southern Railway Co. v. *Greene*, 216 U. S. 400, 54 L. Ed. 536;

Cotting v. *Godard*, 183 U. S. 79, 46 L. Ed. 92;

Quaker City Cab Co. v. *Pennsylvania*, 277 U. S. 389, 72 L. Ed. 927;

Kentucky Finance Corporation v. *Paramount Auto Exchange*, 262 U. S. 544, 67 L. Ed. 1112;

VI

Plaintiff and appellant brought this suit in the District Court of Cass County, North Dakota, under the Uniform Declaratory Judgments Act of such state (Chap. 237 North

Dakota Session Laws 1923, 1925 Supplement Sections 7712a1-7712a16), to secure a judicial declaration that certain real property owned by the plaintiff and located in Cass County, North Dakota, is not subject to the provisions of the Initiative Measure adopted June 29, 1932, entitled "An Act prohibiting corporation farming and relating to corporations acquiring and holding real estate not necessary in the operation of their business" (North Dakota Session Laws 1933, pp. 494, 495), and amended by Chap. 89, Laws 1933, and Chap. 111, Laws 1935. (R. 1-2.) The Initiative Measure as amended by Chap. 89 of North Dakota Session Laws of 1933 reads as follows:

> "That all corporations, both domestic and foreign, except as otherwise provided in this Act, are hereby prohibited from engaging in the business of farming or agriculture." (Section 1, Chap. 89 North Dakota Session Laws of 1933.)
>
> "That all corporations, both domestic and foreign, *who now own or hold rural real estate, used or usable, for farming or agriculture*, except such as is reasonably necessary in the conduct of their business, *shall dispose of the same within ten years from the date that this Act takes effect*, provided that during said ten year period said corporations may farm and use said real estate for agricultural purposes provided further that the ten year limitation provided by this Section shall be deemed a covenant, running with the title to the land against any grantee, successor of (or) assignee of such corporation, which is also a corporation." (Section 2, Chap. 89 North Dakota Session Laws of 1933.)
>
> "That any corporation, either domestic or foreign, that acquires any rural real estate, used or usable, for farming or agriculture, by judicial process or operation of law, hereafter, except such as is reasonably necessary in the conduct of its business, shall dispose of such real estate within ten years from the date that it is so acquired, provided that during said ten

year period it may farm and use the same for agricultural purposes, provided further that the ten year limitation provided by this Section shall be deemed a covenant; running with the title to the land against any grantee, successor of (or) assignee of such corporation, which is also a corporation." (Section 3 Chap. 89 North Dakota Session Laws of 1933.)

"That the title and ownership of any real estate acquired, in any manner, by any domestic or foreign corporation, since the approval and adoption of the aforesaid initiated law, is hereby declared to be legal and valid for all purposes, notwithstanding any provisions in said initiated law contained, but subject however, to all of the provisions now contained in said initiated law, as hereby amended and reenacted." (Section 4, Chap. 89 North Dakota Session Laws of 1933.)

"That nothing in this Act shall be construed to prohibit cooperative corporations, seventy-five per cent of whose members or stockholders are actual farmers, residing in (on) farms or depending principally on farming for their livelihood, from acquiring real estate and engaging in cooperative farming or agriculture." (Section 4, Initiated Measure (North Dakota Session Laws of 1933, pp. 494, 495.)

"That in case any corporation, either domestic or foreign, violates any provisions of this Act and fails within the time fixed by this Act to dispose of any real estate after it has acquired title to same, which is not reasonably necessary for the conduct of its business, then title to such real estate shall escheat to the county in which such real estate is situated upon an action instituted by the State's Attorney of such county, and such county shall within one year dispose of same at public auction to the highest bidder, and the proceeds of such sale, after all expenses of such procedure shall have been paid shall be paid to the corporation that formerly owned the same." (Section 5, Initiated Measure, North Dakota Session Laws of 1933, pp. 494, 495.)

This statute became effective as law in North Dakota on July 29, 1932. The statute was amended by the legislative assembly in 1935 (Laws 1935, Chap. 111) but the provision amended and the amendment are not material to the issues.

The plaintiff in its amended Complaint alleges, (R-1) and the Court found, that it is a non-profit corporation with perpetual existence, organized under the laws of the State of Minnesota;

> "that it is a corporation of, and subject to the discipline of the Methodist Episcopal Church and is created and exists for religious and charitable purposes solely; that under the laws of the State of Minnesota said corporation has the power to sue in any court and to acquire by purchase or otherwise, hold, enjoy, improve, lease, encumber and convey real and personal property;" (R-2)

that prior to 1925 the plaintiff became the owner of a certain real estate mortgage upon a quarter section of land in Cass County, in this state; that on November 27th, 1925, it became the owner of the real property covered by such mortgage, the same having been conveyed to it by the owner in liquidation and satisfaction of the indebtedness secured by the mortgage; that the plaintiff still is the owner in fee simple of such real property; (R. 2-3)

> "that the said real property is farming land used and usable for farming and agriculture;" (R-3)

That plaintiff is not engaged in the business of farming and agriculture, but that since the date of acquisition of such property the same has been farmed, by individuals who are residents of North Dakota, under various farm lease contracts; (R-3) that on the date the said real estate mortgage was acquired by the plaintiff, and on the date that

it acquired title to, and ownership of, said real property, plaintiff had the right and power, under its articles of incorporation and the laws of Minnesota, to be and become the owner of such mortgage and of said real property;

"that at the time and on the date that plaintiff became the owner of said mortgage and of said real estate, there existed in North Dakota no law or statute restricting or forbidding plaintiff's ownership of said mortgage or of said real estate, and that when said mortgage and said real estate were acquired by the plaintiff, plaintiff had the right under the laws of the state of North Dakota as they then existed, to be and become the full, unrestricted and unconditional owner of said mortgage and of said real estate, and to acquire a full, complete and indefeasible title in and to said property" (R. 3).

Such complaint further sets forth the legislative enactments quoted above, and alleges, and the Court found, that the defendant, Cass County, the defendant, R. F. Croal, the duly elected State's Attorney of said county, and the defendant, Alvin C. Strutz, the duly elected and acting Attorney General of the State of North Dakota, and their successors in office, unless restrained and enjoined from so doing, will enforce such laws and will commence action to the end that the title to such real property shall escheat to Cass County immediately upon the lapse of the ten year period ending on July 29, 1942, in accordance with the provisions of such Initiative Measure and acts amendatory thereof (R. 5).

It is further alleged in such Complaint, and the Court found, that the plaintiff, since the year 1930, has constantly attempted to sell the real property in question, but that it has been unable to sell the same for the amount of the mortgage originally on it, and that it will be unable to sell the

land prior to July 29th, 1942; that any sale which plaintiff might be able to make would be substantially below the amount of money plaintiff has invested therein, and that any sale of the property that might be made by the county pursuant to proceedings had under the above mentioned legislative enactments would be for less than the amount of the mortgage, and that the cost and expense of such action and of such sale would result in further decreasing any amount that might be received upon sale. It is also alleged

> "that said real estate above described is not necessary for the conduct of the plaintiff's business, excepting in the following respects: Plaintiff is permitted by the laws of the State of Minnesota to make investments of funds not immediately required for its operations and the ownership of said mortgage or mortgages and the subsequent acquisition of title to the lands covered by said mortgages, represents a legal and lawful function and exercise of one of the powers of the plaintiff as a corporation; that the holding of such surplus funds in such investments is a legal and lawful function and power of plaintiff as a corporation and such investments constitute a part of the conduct of its business" (R. 13).

It is further alleged that application and enforcement of said legislative enactments as against the plaintiff and its said real property, would be violative of rights guaranteed to the plaintiff by Section 10 of Article 1, Section 2 of Article 4 of the Constitution of the United States, by Section 1 of Article 14 of the Amendments thereto (R. 11).

It is further alleged, and the Court found, that an actual controversy exists between the plaintiff and the defendants as to the applicability of said legislative enactments to the plaintiff and its said real property, and as to whether such legislation, if applicable, is violative of the constitu-

tional rights of the plaintiff under the above mentioned constitutional provisions (R. 5).

In such complaint, judgment is asked that the said legislative enactments be adjudged to be not applicable to plaintiff or its said land, or to any farm lands that were acquired prior to July 29th, 1932, the effective date of such legislation, or to any lands that were acquired subsequent to that date upon the foreclosure of liens or mortgages that were legally effective prior to that date; that if the Court adjudge and declare that such legislation is applicable to the plaintiff and to its property so acquired prior to the enactment of such legislation, in that event the court adjudge that such legislation is invalid as unconstitutional and unenforceable, and that the appropriate judgment be entered to prevent the defendants from instituting any action or proceeding against the defendant under the aforesaid legislative enactments (R. 14-15).

The defendants and appellees interposed a general demurrer (R. 16). The trial Court sustained the demurrer (R. 17). In its order, the trial Court ruled that "the subject matter of this action and the facts set forth" in the Complaint constitute a proper action for a declaratory judgment, but that such facts do not constitute a cause of action so as to entitle plaintiff to any relief against the application and enforcement of the statute against the plaintiff and its land. The order was accompanied by a memorandum opinion wherein the Court considered at some length the various contentions advanced by the plaintiff and held: that the statute in question is applicable to the plaintiff corporation and the tract of land described in the Complaint; and that the statute is not violative of any of such constitutional provisions invoked by the plaintiff.

The plaintiff appealed from such order sustaining the demurrer to the Supreme Court of the State of North Dakota, and such Court affirmed such order in *Asbury Hospital* v. *Cass County, et al.*, 72 N. D. 359, 7 N. W. (2d) 438, and a copy of which decision is hereto attached, marked Exhibit "A", and made a part hereof by reference (R. 43).

Under the laws pertaining to the practice and procedure in the State of North Dakota, such appeal from the order sustaining the demurrer constituted an appeal from an intermediate order. (See Section 7832, North Dakota Compiled Laws for 1913, and see the cases of *Devereaux* v. *Katz*, 22 N. D. 351, 133 N. W. 553, and *Langer* v. *Courier News*, 48 N. D. 280, 183 N. W. 1009; *Asbury Hospital* v. *Cass County et al.*, — N. D. —, 16 N. W. (2d) 523).

Following the remand of the case to the trial Court, being the District Court of Cass County, North Dakota, further proceedings were had, and the matter again came on before such Court on December 15, 1943, and appellant and appellees having elected to plead no further, the Court proceeded to make and file findings of fact, conclusions of law, order for judgment, and judgment, finding as true the allegations of fact as set forth in plaintiff's said Complaint, but denying the relief sought by the plaintiff and the appellant, except to declare the law in accordance with the decision of the Supreme Court of North Dakota (R. 18-21). From such final judgment, the plaintiff and appellant again duly appealed to the Supreme Court of the State of North Dakota, which is the highest court of said state in which a decision in this suit can be had, and in such appeal the appellant raised and asserted the same contentions and errors as were asserted in the appeal from the intermediate order sustaining such demurrer. The

errors upon which your petitioner claims to be entitled to an appeal are more fully set out in the Assignment of Errors filed herewith (R. 31).

That thereafter, and on the 3rd day of November, 1944, the Supreme Court of North Dakota delivered and filed its opinion and final judgment in this cause, and affirmed such judgment of the Cass County District Court, holding in effect that such Initiative Measure and acts amendatory thereof were lawful and valid, and consistent with the provisions of the Constitution of the United States heretofore cited and relied on by the appellant. That a copy of the opinion of the Supreme Court of North Dakota upon such second appeal in affirmance of such final decision and judgment is hereto attached, marked Exhibit "B", and made a part hereof by reference (R. 24-71).

VII

That the Supreme Court of North Dakota is the highest court of the State of North Dakota in which a decision in this suit can be had. That as evidenced by such decisions of such Court, there was drawn in question in all stages of this suit the validity of such Initiative Measure and acts amendatory thereof, on the ground that such legislation as applied to the appellant is repugnant to the provisions of the Constitution of the United States heretofore referred to and relied upon by the appellant, and that such decision and judgment is in favor of the validity of such legislation, notwithstanding the appellant's contention that such legislation violates the United States constitutional provisions heretofore referred to.

WHEREFORE, the petitioner and appellant believes that the Supreme Court of the United States has jurisdiction of this appeal, and that the appeal ought to be allowed,

and that such decisions and judgment of the Supreme Court of North Dakota ought to be reviewed and reversed.

Dated this 9th day of January, 1945.

Respectfully submitted,

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EXHIBIT "A"

IN THE SUPREME COURT, STATE OF NORTH DAKOTA

(Reported in 72 N. D. 359, 7 N. W. (2d) 438)

ASBURY HOSPITAL, a Corporation, Plaintiff and Appellant,

vs.

CASS COUNTY, NORTH DAKOTA, a Public Corporation; R. F. Croal, as State's Attorney of Cass County, North Dakota, and His Successors in Office; and Alvin C. Strutz, as Attorney General of the State of North Dakota, and His Successors in Office, Defendants and Respondents

1. The Declaratory Judgments Act (Supp. 1925, Sections 7712a-7712a16) is intended to provide a method whereby parties to a justiciable controversy may have the same determined by a court in advance of any invasion of rights or breach of obligation. But no action or proceeding lies under the Declaratory Judgments Act to obtain a decision which is merely advisory, or which determines only abstract questions. The action or proceeding must involve an actual controversy of a justiciable character between parties having adverse interests.

2. In the instant case it is *held*, for reasons stated in the opinion, that a controversy as to whether a statute which requires corporations to dispose of certain rural real estate within a prescribed period is applicable to the plaintiff and to certain real estate owned by it, is one properly determinable under the Declaratory Judgments Act.

3. Where the language of a statute is clear, certain, and unambiguous, the courts have only the simple and obvious duty to give effect to the intention which the legislature has thus expressed.

4. Initiative Measure, adopted June 29, 1929 (Laws 1933, pp. 494, 495), as amended by Laws 1933, Chap. 89, and Laws 1935, Chap. 111, which provides that "all corpora-

tions, both domestic and foreign, who now own or hold rural real estate, used or usable, for farming or agriculture, except such as is reasonably necessary in the conduct of their business, shall dispose of the same within ten years from the date that this Act takes effect," and that in case any corporation fails within the time fixed to dispose of such real estate, then "title to such real estate shall escheat to the county in which such real estate is situated upon an action instituted by the state's attorney of such county," does not mean that corporations are required to dispose only of real estate that had been acquired, and was being held, ultra vires.

5. Such Initiative Measure, as amended, does not ipso facto effect an escheat if a corporation fails to dispose of real estate within the prescribed period. The holding of real estate, which the statute requires a corporation to dispose of, beyond the prescribed period, constitutes a basis for an action to effect escheat; but the corporation continues to own and hold the real estate until title is divested by judgment rendered in the action brought to effect the escheat.

6. A corporation can have no legal existence beyond the bounds of the state which created it; and, although it may act in another state, it cannot do so as a legal or constitutional right but only by the comity and consent of such state.

7. Subject to the constitutional limitations that a state cannot exclude a corporation engaged in interstate commerce, or a corporation that is an agency or instrumentality of the Federal Government, a state may prohibit foreign corporations from doing business therein, or it may make the right to do business depend on such terms and conditions as in its discretion it may see fit to impose.

8. A foreign corporation which does business or carries on any activity in a state through comity or acquiescence, or under a license given without valuable consideration, does not have a contract binding the state not to restrict the activities of the corporation in, or to exclude it from, the state.

9. A state may prohibit all foreign corporations, which it might exclude from the state, from acquiring real estate therein for any purpose. The state, also, has the power to require all foreign corporations, which it might exclude from the state, to dispose of all real estate not reasonably necessary in the conduct of their business, provided it affords such corporations a reasonable time in which to dispose of such real estate.

10. For reasons stated in the opinion, it is *held*, that the requirement of the statute that corporations dispose of real estate of the character described in the statute, which the corporations owned when the statute became effective, within ten years thereafter, did not, nor did the procedure prescribed by the statute, operate to deprive the plaintiff of property without due process.

11. The justice, wisdom, necessity, utility and expediency of legislation are questions for legislative, and not for, judicial determination.

12. The "equality-of-the-law," clause of the 14th Amendment to the Constitution of the United States, and the "uniformity of operation" requirement of Section 11 of the state Constitution do not forbid classification.

13. Classification is primarily for the legislature; and in determining the validity of legislative classification, judicial inquiry does not concern itself with the accuracy of the legislative finding, but only with the question whether it is so lacking in any reasonable basis as to be arbitrary.

14. There are such distinctions between general corporations and co-operative corporations as to justify classification, and different treatment as to each of such classes.

15. One may attack the constitutionality of a statute only when and so far as it is being, or is about to be, applied to his disadvantage; and to raise the constitutional question he must show that the alleged unconstitutional feature of the statute injures him and so operates as to deprive him of a constitutional right.

16. A corporation is not a citizen within the meaning of the provisions of the Constitution of the United States

(Art. 4, Section 2, and Section 1, Fourteenth Amendment) as to privileges and immunities of citizens.

(Syllabus by the Court)

Opinion filed January 2, 1943. Modified January 25, 1943.

Appeal from the District Court of Cass County

SWANSON, J.

Action for a declaratory judgment by Asbury Hospital, a corporation, against Cass County, R. F. Croal, as State's Attorney of Cass County, and his successors in office, and Alvin C. Strutz, as Attorney General, and his successors in office, to secure a judicial declaration that certain real property owned by the plaintiff in Cass County is not subject to the provisions of an initiative measure, adopted June 29, 1932, entitled "An Act prohibiting corporation farming and relating to corporations acquiring and holding real estate not necessary in the operation of their business."

From an order sustaining a demurrer to the complaint, the plaintiff appeals.

Affirmed. Opinion of Court by Christianson, J.

Nilles, Oehlert & Nilles (Abbott L. Fletcher, of counsel), for appellant.

Alvin C. Strutz, Attorney General, Wm. R. Pearce, Assistant Attorney General, and Ralph F. Croal, State's Attorney, for respondents.

Traynor & Traynor, Sinnes & Duffy, Burnett, Bergesen & Haakenstad, C. L. Young, R. G. Beede and Karl Baldwin, amici curiae.

CHRISTIANSON, J.:

Plaintiff brought this suit in the district court of Cass County, under the Uniform Declaratory Judgments Act of this state (chap. 237, Laws 1923, Supp. 1925, Sections 7712a1-7712a16), to secure a judicial declaration that certain real property owned by the plaintiff is not subject to the provisions of an initiative measure, adopted June 29th, 1932, entitled "An Act prohibiting corporation farming and

relating to corporations acquiring and holding real estate not necessary in the operation of their business" (Laws 1933, pp. 494, 495), and amended by chap. 89, Laws 1933, and chap. 111, Laws 1935. The Initiative Measure as amended by chap. 89, Laws 1933, reads as follows:

> "That all corporations, both domestic and foreign, except as otherwise provided in this Act, are hereby prohibited from engaging in the business of farming or agriculture." Section 1, Chap. 89, Laws 1933.
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> "That all corporations, both domestic and foreign, who now own or hold rural real estate, used or usable, for farming or agriculture, except such as is reasonably necessary in the conduct of their business, shall dispose of the same within ten years from the date that this Act takes effect, provided that during said ten year period said corporations may farm and use said real estate for agricultural purposes provided further that the ten year limitation provided by this Section shall be deemed a covenant, running with the title to the land against any grantee, successor of (or) assignee of such corporation, which is also a corporation." Section 2, Chap. 89, Laws 1933.
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> "That any corporation, either domestic or foreign, that acquires any rural real estate, used or usable, for farming or agriculture, by judicial process or operation of law, hereafter, except such as is reasonably necessary in the conduct of its business, shall dispose of such real estate within ten years from the date that it is so acquired, provided that during said ten year period it may farm and use the same for agricultural purposes, provided further that the ten year limitation provided by this Section shall be deemed a covenant, running with the title to the land against any grantee, successor of (or) assignee of such corporation, which is also a corporation." Section 3, Chap. 89, Laws 1933.
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> "That the title and ownership of any real estate acquired, in any manner, by any domestic or foreign corporation, since the approval and adoption of the aforesaid initiated law, is hereby declared to be legal

and valid for all purposes, notwithstanding any provisions in said initiated law contained, but subject however, to all of the provisions now contained in said initiated law as hereby amended and reenacted." Section 4, Chap. 89, Laws 1933.

"That nothing in this Act shall be construed to prohibit co-operative corporations, seventy-five per cent of whose members or stockholders are actual farmers residing in (on) farms or depending principally on farming for their livelihood, from acquiring real estate and engaging in co-operative farming or agriculture." Section 4, Initiated Measure, Laws 1933, pp. 494, 495.

"That in case any corporation, either domestic or foreign, violates any provisions of this Act and fails within the time fixed by this Act to dispose of any real estate after it has acquired title to same, which is not reasonably necessary for the conduct of its business, then title to such real estate shall escheat to the county in which such real estate is situated upon an action instituted by the State's Attorney of such county, and such county shall within one year dispose of same at public auction to the highest bidder, and the proceeds of such sale, after all expenses of such procedure shall have been paid, shall be paid to the corporation that formerly owned the same." Section 5, Initiated Measure, Laws 1933, pp. 494, 495.

The statute was amended by the legislative assembly in 1935 (Laws 1935, Chap. 111) but the provision amended and the Amendment are not involved here.

The plaintiff in its complaint alleges that it is a nonprofit corporation with perpetual existence, organized under the laws of the state of Minnesota; "that it is a corporation of, and subject to the discipline of the Methodist Episcopal Church and is created and exists for religious and charitable purposes solely; that under the laws of the State of Minnesota said corporation has the power to sue in any court and to acquire by purchase or otherwise, hold, enjoy, improve, lease, encumber and convey real and personal property;" that prior to 1925 the plaintiff became the owner of a certain real estate mortgage upon a quarter

section of land in Cass county, in this state; that on November 27th, 1925, it became the owner of the real property covered by such mortgage, the same having been conveyed to it by the owner in liquidation and satisfaction of the indebtedness secured by the mortgage; that the plaintiff still is the owner in fee simple of such real property; "that the said real property is farming land used and usable for farming and agriculture;" that plaintiff is not engaged in the business of farming and agriculture, but that since the date of acquisition of such property the same has been farmed, by individuals who are residents of North Dakota, under various farm lease contracts; that on the date the said real estate mortgage was acquired by the plaintiff, and on the date that it acquired title to, and ownership of said real property, plaintiff had the right and power, under its articles of incorporation and the laws of Minnesota, to be and become the owner of such mortgage and of said real property; "that at the time and on the date that plaintiff became the owner of said mortgage and of said real estate, there existed in North Dakota no law or statute restricting or forbidding plaintiff's ownership of said mortgage or of said real estate, and that when said mortgage and said real estate were acquired by the plaintiff, plaintiff had the right under the laws of the state of North Dakota as they then existed, to be and become the full, unrestricted and unconditional owner of said mortgage and of said real estate, and to acquire a full, complete, and indefeasible title in and to said property."

The complaint further sets forth the legislative enactments, quoted above, and alleges that the defendant Cass county, the defendant Croal, the duly elected state's attorney of said county, and the defendant Strutz, the duly elected and acting attorney general of the state of North Dakota, unless restrained and enjoined from so doing will enforce such laws and will commence action to the end that the title to such real property shall escheat to the county immediately following July 29th, 1942, in acordance with the provisions of the said initiated measure.

It is further alleged that the plaintiff, since the year 1930, has constantly attempted to sell the real property in question but that it has been unable to sell the same for the

amount of the mortgage originally on it, and that it will be unable to sell the land prior to July 29th, 1942; that any sale which plaintiff might be able to make would be substantially below the amount of money plaintiff has invested therein and that any sale of the property that might be made by the county pursuant to proceedings had under the above mentioned legislative enactments would be for less than the amount of the mortgage and that the cost and expense of such action and of such sale would result in further decreasing any amount that might be received upon sale. It is also alleged "that said real estate above described is not necessary for the conduct of the plaintiff's business, excepting in the following respects: Plaintiff is permitted by the laws of the State of Minnesota to make investments of funds not immediately required for its operations and the ownership of said mortgage or mortgages and the subsequent acquisition of title to the lands covered by said mortgages, represents a legal and lawful function and exercise of one of the powers of the plaintiff as a corporation; that the holding of such surplus funds in such investments is a legal and lawful function and power of plaintiff as a corporation and such investments constitute a part of the conduct of its business."

It is further alleged that application and enforcement of said legislative enactments as against the plaintiff and its said real property would be violative of rights guaranteed to the plaintiff by Section 10 of Article I, Section 2 of Article 4 of the Constitution of the United States, by Section 1 of Article 14 of the Amendments thereto, and by their counterparts (Sections 11, 13, 16 and 20) in the Constitution of North Dakota.

It is further alleged that an actual controversy exists between the plaintiff and the defendants as to the applicability of said legislative enactments to the plaintiff and its said real property and as to whether such legislation, if applicable, is violative of the constitutional rights of the plaintiff under the above mentioned constitutional provisions.

Judgment is asked that the said legislative enactments be adjudged to be not applicable to plaintiff or its said

land, or to any farm lands that were acquired prior to July 29th, 1932, the effective date of such legislation, or to any lands that were acquired subsequent to that date upon the foreclosure of liens or mortgages that were legally effective prior to that date; that if the court adjudge and declare that such legislation is applicable to the plaintiff and to its property so acquired prior to the enactment of such legislation, that in that event the court adjudge that such legislation is unconstitutional and unenforceable, and that the appropriate judgment be entered to prevent the defendants from instituting any action or proceeding against the defendant under the aforesaid legislative enactments.

The defendants interposed a general demurrer. The court sustained the demurrer. In its order the court ruled that "the subject matter of this action and the facts set forth" in the complaint constitute a proper action for a declaratory judgment, but that such facts do not constitute a cause of action so as to entitle plaintiff to any relief against the application and enforcement of the statute against the plaintiff and its land. The order was accompanied by a memorandum opinion wherein the court considered at some length the various contentions advanced by the plaintiff and held: that the statute in question is applicable to the plaintiff corporation and the tract of land described in the complaint; and that the statute is not violative of any of the constitutional provisions invoked by the plaintiff. Plaintiff appeals from the order sustaining the demurrer.

The defendants did not attack the sufficiency of the complaint on the ground that it did not show a controversy properly determinable under the Declaratory Judgments Act. On the contrary, defendants concede that there existed, and still exists, an actual present justiciable controversy between the parties to this action—a controversy involving important and valuable rights affecting the ownership of property belonging to the plaintiff, and that such controversy is properly determinable under the Declaratory Judgments Act. The demurrer was apparently intended to challenge only the validity of the claims of

the plaintiff on the merits of the controversy, namely, the claims of the plaintiff that the provisions of the challenged statute were inapplicable to plaintiff and its real property: First, because the plaintiff and its property were not within the terms of the statute; and, second, that if they were within the terms of the statute that then the statute would be, and is, unconstitutional and void.

The Declaratory Judgments Act provides that courts of record in this State "shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed;" and that "no action or proceeding shall be open to objection on the grounds that a declaratory judgment or decree is prayed for." Supp. 1925, Section 7712a1. It applies to persons "whose rights, status or other legal relations are affected by a statute," and provides that they "may have determined any question of construction * * * arising under the * * * statute * * * and obtain a declaration of rights, status or other legal relation thereunder." Supp. 1925 Section 7712a2. The Act requires that "when declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration" (Supp. 1925, Section 7712a11), and that "all orders, judgments, and decrees under this act may be reviewed as other orders, judgments, and decrees" (Supp. 1925, Section 7712a7). The Act "is declared to be remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations; and is to be liberally construed and administered." Supp. 1925, Section 7712a12.

The Act is intended to provide a method whereby parties to a justiciable controversy may have such controversy determined by a court in advance of any invasion of rights, or breach of obligation. Nashville, C. & St. L. R. Co. vs. Wallace, 288 U. S. 249, 77 L. Ed. 730, 53 S. Ct. 345, 87 ALR 1191; Currin vs. Wallace, 306 U. S. 1, 83 L. Ed. 441, 59 S. Ct. 379; Kariher's Petition, 284 Pa. 455, 131 A. 265; Borchard, Declaratory Judgments, 2d ed., pp. 280 et seq.; Thompson vs. Chilton Co. 236 Ala. 142, 181 So. 701; Green vs. Inter-Ocean Casualty Co., 203 N. C. 767, 167 S. E. 38; Sigal

vs. Wise, 114 Conn. 297, 158 A. 891, 893; Miller vs. Currie, 208 Wis. 199, 242 N. W. 570, 572. "It is intended to relieve litigants of the rule that no rights may be judicially adjudged until a right has been violated (American Nat. Bank & T. Co. vs. Kushner, 162 Va. 378, 174 S. E. 777) and to authorize judicial action in actual controversies where such action formerly was not available. Holly Sugar Corp. vs. Fritzler, 42 Wyo. 446, 296 P. 206. But an action or proceeding for a declaratory judgment must involve an actual controversy of a justiciable character, between parties having adverse interests. No action or proceeding lies under the Declaratory Judgments Act to obtain a decision which is merely advisory, or which merely determines abstract questions." Langer vs. State, 69 N. D. 129, 141, 284 N. W. 238.

In this case there is an actual controversy of a justiciable character between parties having adverse interests. The question in dispute is not abstract and remote, but real and present. The statute has been in existence for more than nine years. The defendants claim that if plaintiff retains ownership of this property until after July 29th, the property will be subject to the provisions of the statute, and may be sold at public auction pursuant to proceedings had under the statute. The defendants assert that they will institute the action prescribed by the statute to bring this about. The plaintiff claims that the statute cannot be constitutionally applied to such real property, and that it may continue to hold ownership thereof without being subject to the proceedings prescribed by the statute. The uncertainty of plaintiff's tenure naturally will interfere with the operation and especially with the leasing, of the property now. Pierce vs. Society of Sisters, 268 U. S. 510, 69 L. Ed. 1070, 45 S. Ct. 571, 39 ALR 468; Euclid vs. Ambler Realty Co. 272 U. S. 365, 71 L. Ed. 303, 47 S. Ct. 114, 54 ALR 1016. The trial court was correct in holding that there is presented a cause for determination under the Declaratory Judgments Act. Borchard, Declaratory Judgments, 2d ed. pp. 43, 62, 177, 786, 927, 930, 931, 984, 986. See also Pierce vs. Society of Sisters, and Euclid vs. Amber Realty Co. supra; Nash-

ville, C. & St. L. R. Co. vs. Wallace, supra; Acme Finance Co. vs. Huse, 192 Wash. 96, 73 P. (2d) 341, 114 ALR 1344, and note at pages 1361 et seq.

The plaintiff contends:

(1) That the statute in question here should be construed as applicable only to lands purchased, or acquired upon foreclosure of mortgages that were executed, subsequent to the enactment of the statute; that it should be construed as having no application to lands acquired upon the foreclosure or in liquidation of mortgages executed prior to July 29th, 1932, the effective date of the statute.

(2) That the provision in the statute that land must be disposed of within ten years from the date it was acquired does not apply to a corporation, like the plaintiff, that has authority to acquire, hold and sell real property, or invest its funds in real estate mortgages; that in such case the holding of lands so acquired is necessary in the conduct of the business of the corporation within the purview of the statute.

(3) That if the statute is construed as applicable to the plaintiff and the land in question here, then the statute is unconstitutional because it operates, (a) to impair the obligations of a contract; (b) To deprive plaintiff of vested property rights without due process of law; and (c) it discriminates arbitrarily between two classes of corporations by relieving co-operative corporations, having a membership of a certain class, from the inhibitions placed on other corporations, and that, as a consequence, it infers upon such co-operative corporations privileges that are not granted to others, in violation of Section 20 of the Constitution of this state, and denies to the plaintiff privileges conferred upon co-operative corporations, in violation of Section 20 of the Constitution of this state and of Section 2, Article 4 of the Constitution of the United States; and also denies to plaintiff the equal protection of the laws, in violation of Section 1, Article 14, of the amendments to the Constitution of the United States, and of Section 11 of the Constitution of North Dakota.

These contentions will be considered in the order stated:

(1) The contention that the statute should be construed as not applicable to real property that was acquired prior to July 29th, 1932, or to real property that has been acquired pursuant to the foreclosure of a mortgage that was executed prior to July 29th, 1932, is directly contrary to the language of the statute. It will be noted that Section 2 of the statue, as quoted above, relates to property owned or held by a corporation at the time the statute became effective, and Section 3 relates to real property that is acquired after the statute became effective. This action involves lands that were owned and held by the plaintiff corporation at the time the statute became effective. Section 2 provides: "All corporations, both domestic and foreign, *who now own or hold* rural real estate, used or usable, for farming or agriculture, except such as is reasonably necessary in the conduct of their business, shall dispose of the same within ten years from the date that this act takes effect." This language is plain—it requires no construction. This provision was contained in the initiative measure which became effective July 29th, 1932, and retained in the amendatory act enacted by the Legislative Assembly in 1933.

"The legislature must be understood to mean what it has plainly expressed, and this excludes construction. The legislative intent being plainly expressed, so that the act read by itself, or in connection with other statutes pertaining to the same subject, is clear, certain, and unambiguous, the courts have only the simple and obvious duty to enforce the law according to its terms." 2 Lewis's Sutherland, Stat. Constr. 2d ed. p. 701; State vs. Rother, 56 N. D. 875, 219 N. W. 574. See also Madden vs. Dunbar, 52 N. D. 65, 201 N. W. 988.

(2) The contention that inasmuch as the plaintiff was authorized under its articles of incorporation to acquire and hold real property, the plaintiff and the land in question here fall within the exception in the statute, which authorizes corporations to continue to hold such real estate "as is reasonably necessary in the conduct of their business"

is likewise untenable. This contention sums to this: That the requirement that a corporation dispose of the rural real estate owned by it, used or usable for farming or agriculture, within ten years from the effective date of the Act, does not apply to any real property that was owned by a corporation that had authority under the articles of incorporation to own and hold real property. In other words—according to the contention of the plaintiff the statute would apply only in cases where the owning and holding of real property were ultra vires. The statute is not predicated upon the proposition that the real estate that a corporation is required to dispose of was acquired or is held by the corporation in excess of its charter powers. The statute presupposes that the real estate has been lawfully acquired and is lawfully owned by the corporation. Where a corporation, on the date the statute became effective, owned and held real estate of the character specified in the statute, it is required to dispose of the same within ten years from that date, excepting alone such real estate "as is reasonably necessary in the conduct" of its business. Corporations are organized for the purpose of carrying on and conducting certain specified business or activity. They are granted certain powers to be used to perform the functions for which they are organized. There is an obvious distinction between the objects or business which a corporation is organized to accomplish or conduct and the powers with which it is vested for the purpose of conducting the business or attaining its objects. When the statute provides that there shall be excepted from its operation such real estate "as is reasonably necessary in the conduct of" the business of a corporation, it means such real estate as is reasonably necessary for carrying on the business or activity which the corporation was created to carry on. 6 Fletcher, Cyc. Corp. pp. 170, 171, Section 2475; 17 Fletcher, Cyc. Corp. pp. 471-474; General Conference vs. Berkey, 156 Cal. 466, 105 P. 411; Major Creek Lumber Co. vs. Johnson, 99 Or. 172, 195 P. 177; Alpena Portland Cement Co. vs. Jenkins & R. Co. 244 Ill. 354, 91 N. E. 480; Friedlander Bros. vs. Deal, 218 Ala. 245, 118 So. 508.

In order for a foreign corporation to be "doing business" or "transacting business" in a state—(within the purview of laws imposing conditions on its right to do business in such state)—"there must be a doing of some of the works, or an exercise of some of the functions, for which the corporation was created and not merely what the corporation might have authority to do. A distinction, in other words, is to be observed in this connection between the purposes of a corporation and its powers. So the doing of an act which, though within the power of the corporation, is not a part of the business which it was authorized to conduct, is not doing business." 17 Fletcher, Cyc. Corp. pp. 471-474.

In General Conference vs. Berkey, 156 Cal. 486, 105 P. 411, supra, the supreme court of California had occasion to consider a question quite similar to the one under consideration here. The General Conference of Free Baptists was a foreign corporation organized under the laws of Maine. It owned a lot in the city of Sacramento. It sold the lot. The question arose whether the sale of this lot constituted "transacting business" or "doing business" by the General Conference of Free Baptists in the state of California. In the decision in the case, the court said:

> "It remains to be considered, then, whether a sale of real estate by such a corporation is a transaction of business by it within the meaning of the constitutional provision above referred to. The phrase 'to transact business,' as used in this provision, is equivalent to the words 'to do business,' found in the statutes of many states, prohibiting a foreign corporation from 'doing business' in such states until it has filed a certificate designating a place of business and a resident agent upon whom process may be served, or complied with other conditions. * * * "This corporation was certainly not engaged in the business of buying and selling land. As we have said, in another connection, its charter plainly indicates that the power conferred upon it to make such purchase and sale was not granted for the purpose of enabling it to do such acts as a means of making a profit thereon. The buying and selling permitted to it were merely incidental

to the carrying on of the main purposes of the corporation. A distinction is to be drawn between the purposes of a corporation and its powers (Floyd vs. Perrin, 30 S. C. f, 12, 8 S. E. 14, 2 LRA 242). The purposes of the plaintiff, as defined in the articles of incorporation, are 'religious, missionary, educational and charitable.' As incidental to these purposes, it is granted a variety of powers, i. e., the power to prosecute and defend suits at law, the power to use a common seal, the power to take and hold for the objects of said corporation any real or personal property, and the power to sell and convey any estate which the interests of the corporation may require to be sold and conveyed. All of these powers are to be exercised in subordination to the main purposes as first declared. The purchase and sale of property by such a corporation is not one of the ends for which it is organized, but is merely a means to enable it to accomplish those ends. Property is to be acquired only for the objects of the corporation, and to be sold only when the interests of the corporation require such sale. The power to sell property by a corporation of this character is as purely incidental to the prosecution of its main purposes as are the other powers enumerated in the charter, as, for example, the power to prosecute and defend suits at law. It is quite generally held that the mere prosecuting or defending of suits by a foreign corporation is not 'doing business,' within the meaning of statutes of the kind we have been discussing."

The language and reasoning of the California court seem quite applicable here.

According to the allegations of the complaint, the plaintiff was incorporated under the laws of the state of Minnesota, and under the laws of that state it "has the power to sue in any court and to acquire by purchase or otherwise, hold, enjoy, improve, lease, encumber and convey real and personal property." Under the laws of Minnesota, and the articles of incorporation it "is a corporation of, and subject to the discipline of the Methodist Episcopal Church and is created and exists for religious and charitable purposes

solely." The exact business or activity it was created to conduct does not appear, except insofar as this may be inferred from its name, namely,—that it is a hospital. But the "plaintiff is not engaged in the business of farming and agriculture." The real estate which it owns "is farming land used and usable for farming and agriculture," and "since the date of the acquisition of said property by plaintiff the same has been farmed by individuals who are residents of North Dakota, under the terms of various and sundry farm lease contracts upon the usual terms which prevail in the community in which said land is situated." The "said real estate is not necessary for the conduct of the plaintiff's business," except as the investment by the plaintiff of its surplus funds in real estate mortgages, and the subsequent acquisition of lands covered by such mortgages constitute lawful exercise of the corporate powers of the plaintiff, and is a part of the conduct of its business.

The bringing of suits, and the ownership of a tract of rural real estate in this state, rented to individuals "upon the usual terms which prevail in this community in which said land is situated" can hardly be said to constitute solely "religious and charitable" works. The bringing of suits, and the investment of funds (to be utilized in carrying on the religious and charitable work the corporation was created to perform) are but means which the corporation may employ to enable it to do the religious and charitable work for which it was created; but they do not constitute the business or activity which the corporation was created to carry on.

We are agreed that the statute in question here is applicable to the plaintiff and that plaintiff holds the tract of land which it acquired in November, 1925, subject to the provisions thereof. The question therefore presents itself whether the statute as so applied is violative of rights guaranteed to the plaintiff by the provisions of the state and Federal Constitutions which it has invoked. The contention of the plaintiff that the statute, if applied to it and to the tract of land in question, operates to impair the obligations of a contract, to impair plaintiff's vested rights and to deprive it of property without due process of law, are predicated upon the proposition that at the time the

plaintiff became the owner of the land it had a right to acquire the same and there was no such restriction upon its right of ownership, tenure or use, as are prescribed by the challenged statute; and that plaintiff has acquired a vested right to continue to own and enjoy such land in the same manner and to the same extent as was authorized by the laws in force at the time it acquired the land.

A corporation may be created only by authority of the sovereign power. 12 Am. Jur. 175, 234; 18 CJS p. 404. "Corporations are the creations of the state endowed with such faculties as the state bestows and subject to such conditions as the state imposes." 13 Am. Jur. 234. "A corporation can have no legal existence beyond the bounds of the state or sovereignty which created it, and although it may act in another state or country, it cannot do so as a legal or constitutional right but only by the comity and consent of such state or country." 20 CJS p. 12. The Constitution of this State provides that "no charter of incorporation shall be granted, changed or amended by special law, except in the case of such municipal, charitable, educational, penal or reformatory corporations as may be under the control of the state;" but that "the Legislative Assembly shall provide by general laws for the organization of all corporations hereafter to be created and that any such law so passed shall be subject to future repeal or alteration," and that "no foreign corporation shall do business in this State without having one or more places of business and an authorized agent or agents in the same upon whom process may be served." N. D. Const. Sections 131 and 136.

Subject to the constitutional limitations that a State cannot exclude a corporation engaged in interstate commerce, or a corporation that is an agency or instrumentality of the Federal Government (23 Am. Jur. 211-214; 20 CJS pp. 32, 33), "a state may prohibit foreign corporations from doing business therein, or it may make the right to do business depend on such terms and conditions as it may in its discretion see fit to impose." 20 CJS p. 30; 23 Am. Jur. 224, Crescent Cotton Oil Co. vs. Mississippi, 257 US 129, 66 L. Ed. 166, 42 S. Ct. 42; see also Baltic Min. Co. vs. Mas-

sachusetts, 231 US 68, 58 L. Ed. 127, 34 S. Ct. 15; Cheney Bros. Co. vs Massachusetts, 246 US 147, 62 L. Ed. 632, 38 S. Ct. 295; Underwood Typewriter Co. vs Chamberlain, 254 US 113, 65 L. Ed. 165, 41 S. Ct. 45.

"The corporation being the mere creation of local law, can have no legal existence beyond the limits of the sovereignty where created. As said by this court in Bank of Augusta vs Earle, 'It must dwell in the place of its creation, and cannot migrate to another sovereignty.' The recognition of its existence even by other States, and the enforcement of its contracts made therein, depend purely upon the comity of those State—a comity which is never extended where the existence of the corporation or the exercise of its powers are prejudicial to their interests or repugnant to their policy. Having no absolute right of recognition in other States, but depending for such recognition and the enforcement of its contracts upon their assent, it follows, as a matter of course, that such assent may be granted upon such terms and conditions as those States may think proper to impose. They may exclude the foreign corporation entirely; they may restrict its business to particular localities, or they may exact such security for the performance of its contracts with their citizens as in their judgment will best promote the public interest. The whole matter rests in their discretion." Paul vs Virginia, 8 Wall. 75 (US) 168, 181, 19 L. Ed. 357, 360; Atlantic Ref. Co. vs Virginia, 302 US 22, 26, 82 L. Ed. 24, 28, 58 S. Ct. 75.

"A foreign corporation doing business in a State through comity or acquiescence, or under a license given without valuable consideration, has no contract binding the State not to exercise its powers to exclude it." 23 Am. Jur. 224, see also 20 CJS pp. 31 et seq.; 17 Fletcher, Cyc. Corp. pp. 797 et seq. In such case, the state may repeal at any time a statute granting permission to do such business, and may withdraw or revoke such license, and may withdraw its implied consent to a foreign corporation which has been allowed on principles of comity to engage in business therein without express permission and may evict such corporation, provided its action does not operate to deprive the corporation of its property without due process, obstruct or burden "interstate or foreign commerce, or im-

pede business conducted by Federal authority." 23 Am. Jur. 224, 225; 17 Fletcher, Cyc. Corp. pp. 797, 798; 20 CJS pp. 31 et seq.; National Council vs State Council, 203 US 151, 51 L. Edt 132, 27 S. Ct. 46; Crescent Cotton Oil Co. vs Mississippi, supra. Of course, where a foreign corporation is admitted to a State, not as a mere licensee, but upon terms and conditions which create a contract between the corporation and the state, the state may not impair the obligations of such contract. But, even where there may be said to be a contract between the state and a foreign corporation, the State may have reserved the power to alter the conditions on which the corporation is permitted to do business, or to revoke the right to do business in the State at all. 23 Am. Jur. 223.

The right and capacity of a corporation to acquire and own real estate is frequently expressly limited. 6 Fletcher, Cyc. Corp. pp. 670-681.

"Very often, too, there are provisions in the constitutions or statutes which directly or by necessary implication require surplus or unnecessary property to be disposed of by the corporation, within a fixed period of time such as five years, or six years, or ten years, or some other designated number of years." 6 Fletcher, Cyc. Corp. pp. 681, 682.

Some states, by constitutional or statutory provisions, have prohibited foreign corporations from acquiring and holding real property within their limits, or have restricted the right to acquire such property to the purchase thereof at a judicial sale for the purpose of collecting or enforcing a lien or judgment in favor of the corporation, 17 Fletcher, Cyc. Corp. pp. 173, 174; Com. ex rel. Atty. Gen. vs. New York, L. E. & W. R. Co. 114 Pa. 340, 7 A. 756; Wash. Const. Art. 2, Sec. 33; Ky. Const. Sec. 192; German Ins. Co. vs. Com. 141 Ky. 606, 133 S. W. 793; First Nat. Bank vs. Com. 143 Ky. 816, 137 S. W. 518; Com. vs. Clark County Nat. Bank, 187 Ky. 151, 219 S. W. 175; Okla. Const. Art. 22, Sec. 2; Okla. Sess. Laws 1907-1908, pp. 196, 197; State vs. Prairie Oil & Gas Co. 64 Okla. 267, 167 P. 756; Wolfe vs. State, 163 Okla. 180, 21 P. (2d) 1067; Neb. Comp. Stat. 1922, Sections 5687, 5690; Lord vs. Schultz, 115 Neb. 33, 211 N. W. 210, 489.

See also S. D. Const. Sec. 7, Art. 17; State ex rel. Chamberlain vs. Hutterische Bruder Gemeinde, 46 S. D. 189, 191 N. W. 635; Groo vs. Norman & Robinson, 42 App. D. C. 387, 388, 389; Puerto Rico vs. Rubert Hermanos, Inc., 309 U. S. 543, 84 L. Ed. 916, 60 S. Ct. 699.

"Foreign corporations enter a state and transact business therein only with that state's consent, express or implied. It may exclude them entirely, or impose whatever restrictions or conditions it sees fit, provided in so doing it does not violate any provisions of the Federal Constitution or laws. Particularly is this true with reference to real property rights and transactions. For each state has the power, uncontrolled by another, to establish rules regulating the tenure of lands lying within its limits, and the manner of buying and selling them by persons and corporations under its jurisdiction. And a state may, by statute, expressly prohibit foreign corporations from acquiring and holding real property within its limits, or impose such conditions and restrictions upon the right as it may see fit." 17 Fletcher, Cyc. Corp. pp. 173, 174; Munday vs. Wisconsin, 252 U. S. 499, 64 L. Ed. 684, 40 S. Ct. 365.

Where interstate commerce is not directly affected, a state has the power to exclude all foreign corporations, except such as are agencies or instrumentalities of the Federal Government (Phillips Petroleum Co. vs. Jenkins, 297 U. S. 629, 634, 80 L. Ed. 943, 947, 56 S. Ct. 611); and a state has the power to prohibit any foreign corporation, which it might exclude from the state, from acquiring real property in the state for any purpose (17 Fletcher, Cyc. Corp. 173, 174), even through conveyances executed and delivered in another state. Munday vs. Wisconsin, supra. The state might have refrained from enacting laws providing for organization of corporations for any purpose (Phillips Petroleum Co. vs. Jenkins, 297 U. S. at p. 634, 80 L. Ed. at p. 947, 56 S. Ct. 611) or having enacted laws providing for organization of corporations, it might later alter, suspend, or repeal such laws, provided, that in so doing the state observed the constitutional requirements of due process and equal protection of the law, and did not lay a burden upon, or interfere with, interstate commerce, or with corporate

agencies or instrumentalities of the Federal Government. N. D. Const. Sec. 131; Comp. Laws 1913, Sec. 4495; Tomlinson vs. Jessup, 15 Wall. 82 (U. S.) 454, 21 L. Ed. 204; Greenwood vs. Union Freight R. Co. 105 U. S. 13, 26 L. Ed. 961; Missouri P. R. Co. vs. Kansas, 216 U. S. 262, 54 L. Ed. 472, 30 S. Ct. 330; Calder vs. Michigan, 218 U. S. 591, 54 L. Ed. 1163, 31 S. Ct. 122; Polk vs. Mutual Reserve Fund Life Asso. 207 U. S. 310, 52 L. Ed. 222, 28 S. Ct. 65; International Bridge Co. vs. New York, 254 U. S. 126, 65 L. Ed. 176, 41 S. Ct. 56; Ft. Smith Light & Traction Co. vs. Board of Improvement, 274 U. S. 387, 71 L. Ed. 1112, 47 S. Ct. 595; Phillips Petroleum Co. vs. Jenkins, supra.

Where there is a reservation in the state Constitution of power to alter, suspend or repeal all laws, providing for organization of corporations—such as there is in the Constitution of this state—this reservation becomes a part of the charter of the corporation (6 Fletcher, Cyc. Corp. Sections 823-825), and it is beyond the power of the legislature to confer upon corporations powers that are not subject to abrogation or change pursuant to the legislative power so reserved. Missouri P. R. Co. vs. Kansas, supra; Texas & N. O. R. Co. vs. Miller, 221 U. S. 408, 414, 55 L. Ed. 789, 795, 31 S. Ct. 534; Phillips Petroleum Co. vs. Jenkins, supra. Where there is a constitutional reservation of continued legislative power (such as in Sec. 131 of the Constitution of this state) the matter of the organization of corporations, and the powers to be granted to and exercised by them are subjects of general governmental policy which one legislative assembly may not bargain away or withdraw from the constitutional law-making function of a succeeding legislature. Missouri P. R. Co. vs. Kansas, supra, and Texas & N. O. R. Co. vs. Miller, supra. Obviously, permission or authorization to foreign corporations to enter and do business in the state is no more withdrawn from legislative action than are the charters of domestic corporations. Connecticut Mut. L. Ins. Co. vs. Spratley, 172 U. S. 602, 620-622, 43 L. Ed. 569, 575, 576, 19 S. Ct. 308; Phillips Petroleum Co. vs. Jenkins, supra, 297 U. S. at page 635, 80 L. Ed. at page 948, 56 S. Ct. 611; Waters-Pierce Oil Co. vs. Texas, 177 U. S. at pages 43-47, 44 L. Ed. at pages 664, 665, 20 S. Ct. 518; 23 Am. Jur. 296-298.

The plaintiff had no express permission to acquire and hold real estate in the state. All activities incident to the acquisition of the real estate in question here and the use and enjoyment thereof were had as a matter of comity. "Comity is a matter of favor and not of right." A state "may by statute modify or withdraw such comity towards a corporation created by, or existing under the laws of another state or sovereign, provided the modification does not come in conflict with the paramount laws of the United States." 17 Fletcher, Cyc. Corp. Sec. 8333, pp. 131-135. It goes without saying that the plaintiff has no greater rights than if it had qualified under the laws relating to the admission of foreign corporations; and mere permission to carry on any activity or to acquire property within the state does not create a contract which will preclude the state from subsequently restricting the power of foreign corporations to acquire and hold real property, provided that in making such restriction, the state does not deprive the corporation or its stockholders of property without due process or deny the equal protection of the laws. The permission to do business, whether express or implied, does not constitute a contract or create a vested right to continue to hold the property, without restrictions other than those which existed at the time it was acquired. Such permission constitutes a license which the state subsequently may abrogate or change, if in so doing there is no deprival of property without due process or denial of equal protection of the laws.

In considering the nature of an authorization by a state to a foreign corporation to do business, and the power of the state to alter or abrogate such authorization, in Connecticut Mut. L. Ins. Co. vs. Spratley, 172 U. S. 602, 43 L. Ed. 569, 19 S. Ct. 308, supra, the Supreme Court of the United States said:

"Instead of a contract, it was a mere license given by the state to a foreign corporation to do business within its limits upon complying with the rules and regulations provided for by law. That law the state was entirely competent to change at any time by a subsequent statute without being amenable to the charge that such subsequent statute

impaired the obligation of a contract between the state and the foreign corporation doing business within its borders under the former act.

"Statutes of this kind reflect and execute the general policy of the state upon matters of public interest, and each subsequent legislature has equal power to legislate upon the same subject. The legislature has power at any time to repeal or modify the act granting such permission, making proper provision when necessary in regard to the rights of property of the company already acquired, and protecting such rights from any illegal interference or injury. Douglas vs. Kentucky, 168 U. S. 488, 42 L. Ed. 553, 18 S. Ct. 199. The cases showing the right of a state to grant or refuse permission to a foreign corporation of this kind to do business within its limits are collected in Hooper vs. California, 155 U. S. 648, at 652, 39 L. Ed. 297, at 299, 15 S. Ct. 207, 5 Inters. Com. Rep. 610.

"Having the right to impose such terms as it may see fit upon a corporation of this kind as a condition upon which it will permit the corporation to do business within its borders, the state is not thereafter and perpetually confined to those conditions which it made at the time that a foreign corporation may have availed itself of the right given by the state, but it may alter them at its pleasure. In all such cases there can be no contract springing from a compliance with the terms of the act, and no irrepealable law, because they are what is termed 'governmental subjects,' and hence within the category which permits the legislature of a state to legislate upon those subjects from time to time as the public interests may seem to it to require.

"As these statutes involve public interests, legislation regarding them are necessarily public laws, and as stated in Newton vs. Mahoning County, 100 U. S. 548, at 559, 25 L. Ed. 710, at 711:

"'Every succeeding legislature possesses the same jurisdiction and power with respect to them as its predecessors. The latter have the same power of repeal and modification which the former had of enactment, neither more nor less. All occupy, in this respect, a footing of perfect equal-

ity. This must necessarily be so in the nature of things. It is vital to the public welfare that each one should be able at all times to do whatever the varying circumstances and present exigencies touching the subject involved may require. A different result would be fraught with evil.'" Connecticut Mut. L. Ins. Co. vs. Spratley, 172 U. S. at pages 620-622, 43 L. Ed. pp. 575, 576, 19 S. Ct. 308.

As has been pointed out, there are constitutional or statutory provisions in many states restricting the right of corporations to acquire and hold real estate and requiring that such corporations dispose of real estate which they have acquired, within a fixed period of time.

No instance has been called to our attention, and none has been found, where such legislation was predicated upon the proposition that the State was without power to require a corporation to dispose of real property that it had acquired before the statute or constitutional provision became effective; and in some of the states, the legislation restricting the right of corporations to hold real property is specifically made applicable as well to property that had been acquired before the legislation became effective as to property subsequently acquired. Okla. Const. Art. 22, Sec. 33, and Session Laws 1907-08, p. 197; Neb. Comp. Stat. 1922, Sections 5687, 5690; Ky. Const. Sec. 192; Com. vs. Clark County Nat. Bank, 187 Ky. 151, 219 S. W. 175. See also Puerto Rico vs. Rubert Hermanos, Inc. 309 U. S. 543, 84 L. Ed. 916, 60 S. Ct. 699; State vs. Prairie Oil & Gas Co. 64 Okla. 267, 167 P. 756; Wolfe vs. State, 163 Okla. 180, 21 P. (2d) 1067; State ex rel. Collins vs. Crescent Cotton Oil Co. 116 Miss. 398, 77 So. 185; Crescent Cotton Oil Co. vs. State, 121 Miss. 615, 83 So. 680; Crescent Cotton Oil Co. vs. Mississippi, 257 U. S. 129, 66 L. Ed. 166, 42 S. Ct. 42. In Com. vs. Clark County Nat. Bank, 187 Ky. 151, 219 S. W. 175, supra, it was contended that inasmuch as the land sought to be escheated had been acquired by the corporation before the adoption of the constitutional provision, "the corporation had a vested right which was unaffected by the adoption" of the new constitution containing the provision as "there could

be no impairment of the obligation of contract or rights acquired or vested before the making of the law."

The court of appeals of Kentucky held that the constitutional provision and the statutes enacted pursuant thereto were applicable to lands that had been acquired by a corporation prior to the adoption of the Constitution and the enactment of the statutes, and that the enforcement of such constitutional and statutory provisions against lands which a corporation had acquired prior to the adoption of the Constitution and enactment of the statute did not result in "unconstitutionally" impairing "the contract or vested rights" of the corporation.

We think it clearly follows from the principle announced by the Supreme Court of the United States in Connecticut Mut. L. Ins. Co. vs. Spratley, 172 U. S. 602, 43 L. Ed. 569, 19 S. Ct. 308 supra, and Phillips Petroleum Co. vs. Jenkins, 297 U. S. 629, 80 L. Ed. 943, 56 S. Ct. 611, supra, that the provisions of the statute in question here restricting the power of the plaintiff to hold real estate, used or usable for farming or agriculture, and requiring it to dispose of the same within ten years from the date the act took effect, do not impair the obligations of any contract between the State and the plaintiff, or impair any vested property right of the plaintiff.

The question next presents itself whether such provisions operate to deprive the plaintiff corporation of its property without due process of law. This question must be answered in the negative. The state having the right to restrict the power of the plaintiff and corporations similarly situated as to the acquisition and ownership of real estate within the state, it naturally follows that any legislation which it might enact to carry such policy into effect must have a beginning, and "the Fourteenth Amendment does not forbid statutes and statutory changes to have a beginning." Sperry & H. Co. vs. Rhodes, 220 U. S. 502, 55 L. Ed. 561, 31 S. Ct. 490. Of course, the state could not put its new policy into effect in such sudden and arbitrary manner as to practically sacrifice and confiscate the interest of the corporation in the property that it had been

permitted to acquire within the State. In making the change it must give the corporation reasonable time in which to dispose of its property. 17 Fletcher, Cyc. Corp., p. 799. See also State ex rel. Collins vs. Crescent Cotton Oil Co., 116 Miss. 398, 77 So. 185; Crescent Cotton Oil Co. vs. State, 121 Miss. 615, 83 So. 680; Crescent Cotton Oil Co. vs. Mississippi, 257 U. S. 129, 66 L. Ed. 166, 42 S. Ct. 42. The statute gives to corporations like the plaintiff, who held rural real estate at the time the statute became effective, ten years in which to dispose of it before such property becomes subject to the provisions of the statute providing for disposal of the property under the procedure provided by the statute. Clearly the period of time provided by the statute cannot be said to be so unreasonable or arbitrary as to operate to deprive corporations holding land subject to the statute of property without due process of law. See State ex rel. Collins vs. Crescent Oil Co.; Crescent Oil Co. vs. State, and Crescent Oil Co. vs. Mississippi, all supra. Such period is considerably longer than that prescribed in analogous laws in other states. Thus, Oklahoma prescribes seven years, and Kentucky five years (Okla. Const. Art. 22, Sec. 33, and Session Laws 1907-08; Ky. Const. Sec. 192; Com. vs. Clark County Nat. Bank, 187 Ky. 151, 219 S. W. 175), and under the Oklahoma and Kentucky laws the corporation receives no part of the proceeds of the sale of lands escheated to the state, but the lands and proceeds of sale thereof become the property of the state.

Appellant contends, however, that the economic depression which existed at the time the statute was enacted, and which continued thereafter, operated to depress the market value of lands in such degree as to render it practically impossible for corporations to dispose of their lands at anything like their actual value within the ten-year period, and that consequently the application of the statute will deprive the plaintiff and other corporations owners of land similarly situated of property without due process. The contention and the argument in support of it involve the wisdom and justice of the law; but do not show that the law is violative of the constitutional provisions upon which plaintiff relies. The validity of a statute must be deter-

mined solely by whether it is within the purview of legislative powers as limited by the Federal and state Constitutions. 11 Am. Jur. 803; 16 CJS pp. 471 et seq.; State ex rel. Linde vs. Taylor, 33 N. D. 76, 156 N. W. 561, LRA-1915B, 156. The justice, wisdom, necessity, utility or expediency of a law which is within their powers are for the lawmakers. 11 Am. Jur. 803, 804 et seq., 16 CJS pp. 471 et seq.

A court has no power to declare a statute invalid on the ground of unjust and oppressive provisions, unless such provisions contravene the state or Federal Constitution. "The courts are not the guardians of the rights of the people of the State, except as those rights are secured by some constitutional provision which comes within the judicial cognizance." 1 Cooley, Const. Lim. 8th ed. p. 345. "The protection against unwise or oppressive legislation, within constitutional bounds, is by an appeal to the justice and patriotism of the people themselves, or their legislative representatives." Lommen vs. Minnesota Gaslight Co., 65 Minn. 196, 208, 68 N. W. 53, 54. "The judiciary can only arrest the execution of a statute when it conflicts with the Constitution." 1 Cooley, Const. Lim. 8th ed., pp. 341, 345. See also Billings vs. Illinois, 188 U. S. 97, 102, 47 L. Ed. 400, 403, 23 S. Ct. 272.

It is contended, however, that the procedure prescribed by the statute to effect the escheat fails to conform to the requirement of due process. This contention cannot be sustained. The statute does not purport to divest a corporation of title to land which it holds beyond the prescribed period. It makes such holding the ground for an action to effect the escheat; but the corporation continues to own and hold the property until title thereto is divested by judgment rendered in the action brought pursuant to the statute. 19 Am. Jur. 399, Sec. 33. The corporation must be made a party to the action. It will have full opportunity to be heard in defense. It goes without saying that judgment to effect escheat may be rendered only if the cause of action is established. If the cause is established and judgment to effect escheat rendered, the county must dispose of the land within one year "at public auc-

tion to the highest bidder" and the proceeds of the sale, after payment of expenses of the action and of the sale, must be paid to the corporation. It is true the statute does not prescribe the form of notice of sale, or the manner of publication thereof; but it does require sale to be made within a year, and that the sale be a public one. (The sale is predicated upon the judgment effecting the escheat.) The corporation has a direct interest in the sale, and the court has the power to protect the rights of the corporation as to the notice and conduct of the sale, by appropriate provisions in its judgment. Greenwood vs. Union Freight R. Co., 105 U. S., (15 Otto) at page 19, 26 L. Ed. at page 964; Church of Jesus Christ of L. D. S. vs. United States, 136 U. S. 1, 34 L. Ed. 478, 10 S. Ct. 792.

Plaintiff contends that the statute makes a purely arbitrary and unreasonable discrimination against all general corporations, and in favor of certain cooperative corporations, in contravention of the provision of the Fourteenth Amendment to the Constitution of the United States that "no state shall * * * deny to any person within its jurisdiction the equal protection of the laws" and of the requirement of Sec. 11 of the Constitution of North Dakota that "all laws of a general nature shall have a uniform operation."

The contentions cannot be sustained. In passing, it should be noted that it is at least doubtful whether the "equal-protection-of-the-laws" clause of the Fourteenth Amendment may be invoked by the plaintiff. The inhibition in that clause relates only to persons *within the jurisdiction* of the State. The plaintiff has not rendered itself subject to suit in the courts of this state. In Blake vs McClung, 172 US 239, 43 L. Ed. 432, 19 S. Ct. 187, the Supreme Court of the United States held: "A corporation not created by the laws of a state, nor doing business in that state under conditions that subject it to process from the courts of that state, is not within the jurisdiction of that state, within the meaning of the constitutional provision that no state shall deny to any person within its jurisdiction the equal protection of the laws." (Syllabus 6), Blake vs McClung, 43 L. Ed. 432.

The rule announced in Blake vs McClung, supra, seems to have been qualified to some degree in Kentucky Finance Corp. vs Paramount Auto Exch. Corp. 262 US 544, 67 L. Ed. 1112, 43 S. Ct. 636. We deem it unnecessary to determine the effect of this latter decision upon the rule announced in Blake vs McClung, for we are agreed that the statute does not violate any rights that are or would be guaranteed to the plaintiff by the "equality-of-the-laws" clause of the Fourteenth Amendment or the "uniformity of operation" requirement of Sec. 11 of the state Constitution. Neither the equality-of-the-laws clause in the Fourteenth Amendment nor the uniformity of operation requirement of Sec. 11 of the state Constitution forbids classification. 12 Am. Jur. pp. 140 et seq.; 59 CJ pp. 722 et seq.; Brown vs Steckler, 40 N. D. 113, 168 N. W. 670, 1 ALR 753; Peterson vs Panovitz, 62 ND. 328, 243 N. W. 798, 84 ALR 1290; Bratberg vs Advance-Rumely Thresher Co. 61 N. D. 452, 238 N. W. 552, 78 ALR 1290.

"Classification is primarily for the legislature which has a wide discretion in respect thereof, and in determining its constitutionality, judicial inquiry does not concern itself with the accuracy of the legislative finding, but only with the question whether it is so lacking in any reasonable basis as to be arbitrary." 16 CJS pp. 1001, 1002.

Obviously, the inherent differences between corporations and natural persons are sufficient to justify classification whereby, for many purposes, corporations are put in one classification and individuals in another. 12 Am. Jur. 199, Constitutional Law; Crescent Cotton Oil Co. vs Mississippi, 257 US 129, 66 L. Ed. 166, 42 S. Ct. 42, supra. So, likewise, corporations "may, within reasonable limits, be divided into classes, and each class given such rights, capacities and powers as the legislature may see fit." 12 Am. Jur. 197, Constitutional Law. Thus, the exempting by the legislature of farmers' mutual insurance companies, organized and doing business under the laws of the State and insuring only farm property, from the regulations of fire insurance rates imposed upon other insurance companies, does not deny to the corporations subjected to such regulations the equal protection of the laws. German Alliance Ins. Co. vs. Lewis, 233 US 389, 58 L. Ed. 1011, 34 S. Ct.

612; LRA 1915C 1189. See also State ex rel. Linde vs Taylor, 33 N. D. 76, 108, 156 N. W. 151, LRA1918A 156, Ann. Cas. 1918A 583. And, the legislature may, without violating the constitutional guaranty of equal protection of the laws, discriminate between life and casualty companies in restricting the period to which such companies may, by agreement, limit the bringing of suits on their contracts. Metropolitan Casualty Ins. Co. vs Brownwell, 294 US 580, 79 L. Ed. 1070; 55 S. Ct. 538.

The distinctions between general corporations and co-operatives have been held repeatedly to justify classification, and "different treatment" as to each of such classes. United States vs Rock Royal Cooperative, 307 US 533, 563, 83 L. Ed. 1446, 1464, 59 S. Ct. 993; Northern Wisconsin Co-op. Tobacco Pool vs Bekkedal, 182 Wis. 571, 197 N. W. 936, 945; Chaffee vs Farmers' Coop. Elevator Co. 39 N. D. 585, 168 N. W. 616. See also Brown vs Steckler, 40 N. D. 113, 168 N. W. 670, 4 ALR 753, supra; Northwestern Mut. L. Ins. Co. vs Wisconsin, 247 US 132, 62 L. Ed. 1025, 38 S. Ct. 444; Orient Ins. Co. vs Daggs, 172 US 557, 43 L. Ed. 552, 19 S. Ct. 281.

The statute in question here authorizes co-operative corporations to acquire real estate and engage in co-operative farming or agriculture, and denies the power to so do to corporations organized under the general corporation laws. We are agreed that in so doing the legislature did not make such arbitrary or unreasonable discrimination as to constitute a denial of the equal protection of the laws or violate the requirement that all laws of a general nature shall have a uniform operation. In short, we believe there is a reasonable basis for the classification made.

The plaintiff contends, however, that, in any event, the provision which limits the right to acquire real estate and engage in farming or agriculture to co-operative corporations, 75 per cent of whose members or stockholders are actual farmers or residing on farms or depending principally on farming or agriculture for their livelihood, is an arbitrary or unreasonable classification and violative of the principle of equal protection of the laws. This question is not involved and may not properly be considered here. It is an elementary rule repeatedly announced with practical

unanimity by the courts of this country, including the Supreme Court of the United States and this court, that a person can question the constitutionality of a statute only when and insofar as it is sought to be applied to his disadvantage. Rindge Co. vs. Los Angeles County, 262 US 700, 67 L. Ed. 1186, 43 S. Ct. 689; Minot Special School Dist. vs Olsness, 53 N. D. 683, 696, 208 N. W. 968, 45 ALR 1337; Premier-Pabst Sales Co. vs Grosscup, 298 US 226, 80 L. Ed. 1155, 56 S. Ct. 754; Henneford vs Silas Mason Co. 300 US 577, 81 L. Ed. 814, 57 S. Ct. 524; 16 CJS pp. 161, 162. "One attacking the constitutionality of a statute is not the champion of any rights except his own." Henneford vs Silas Mason Co. supra.

"One may attack the constitutionality of a statute only when and so far as it is being or is about to be applied to his disadvantage; and to raise the question he must show that the alleged unconstitutional feature of the statute injures him and so operates as to deprive him of a constitutional right." 16 CJS pp. 161, 162.

In Premier-Pabst Sales Co. vs Grosscup, supra, the Supreme Court of the United States said: "We have no occasion to consider the constitutional question, because it appears that the plaintiff is without standing to present it. One who would strike down a state statute as obnoxious to the Federal Constitution must show that the alleged unconsitutional feature injures him."

The plaintiff is not a co-operative corporation. It is not engaged in farming or agriculture. It cannot be injured by the provisions of the statute which discriminates in favor of co-operative corporations "75 per cent of whose members or stockholders are actual farmers, residing on farms or depending principally on farming for their livelihood," and against co-operative corporations 75 per cent of whose members or stockholders are not "actual farmers, residing on farms or depending principally on farming for their livelihood." According to the allegations of the plaintiff's complaint, injury is threatened to it only under the provisions which required corporations who had acquired rural real estate, used or usable for farming, at or prior to the

effective date of the statute, to dispose of such real estate within ten years thereafter.

The plaintiff also contends that the statute is violative of Sec. 2 of Article 4 of the Constitution which provides that "the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states." This contention is clearly devoid of merit. It is settled beyond controversy that a corporation is not a citizen within the meaning of Sec. 2 of Article 4, of the Federal Constitution or of Sec. 1 of Article 14 of the Amendments to the Federal Constitution as to the privileges and immunities of citizens. Orient Ins. Co. vs. Daggs, 172 U. S. 557, 43 L. Ed. 552, 19 S. Ct. 281, supra; Waters-Pierce Oil Co. vs. Texas, 177 U. S. 28, 45, 44 L. Ed. 637, 664, 20 S. Ct. 518; 12 Am. Jur. 100, 23 Am. Jur. 259, 8 Fletcher, Cyc. Corp. p. 449.

It follows from what has been said that the order appealed from is correct. It must be and it is affirmed. The case is remanded to the district court for further proceedings conformable to law.

A. M. CHRISTIANSON,
JAMES MORRIS,
W. L. NUESSLE,
THOMAS J. BURKE,
HARVEY J. MILLER,
District Judge.

Burr, J., being disqualified, did not participate, Hon. Harvey J. Miller, Judge of Sixth Judicial District, sitting in his stead.

APPENDIX "B"

IN THE SUPREME COURT, STATE OF NORTH DAKOTA

ASBURY HOSPITAL, a Corporation, *Plaintiff and Appellant,*

vs.

CASS COUNTY, NORTH DAKOTA, a Public Corporation, R. F. CROAL as States Attorney of Cass County, North Dakota, and his successors in office, and ALVIN C. STRUTZ as attorney general of the State of North Dakota and his successors in office; *Defendants* and *Respondents.*

Following Asbury Hospital v. Cass County, 72 N. D. 359, 7 N. W. 2d. 438, it is *held* that the application of the provisions of Initiative Measure, adopted June 29, 1932 (Laws 1933, pp. 494, 495), as amended by Laws 1933, Chap. 89, and Laws 1935, Chap. 111, to the plaintiff and lands owned by it in North Dakota, does not operate to infringe upon or deny to the plaintiff any rights guaranteed to it by Sec. 10, Article 1, Sec. 2, Article 4, the Fifth Amendment, and Sec. 1 of the Fourteenth Amendment to the Constitution of the United States, or by Sections 11, 13, 16, 20 and 22 of the Constitution of North Dakota.

(Syllabus by the Court)

Action for a declaratory judgment by Asbury Hospital, a corporation, against Cass County, R. F. Croal, as State's Attorney of Cass County, and his successors in office, and Alvin C. Strutz, as Attorney General, and his successors in office, to secure a judicial declaration that certain real property owned by the plaintiff in Cass County is not subject to the provisions of an initiative measure, adopted June 20, 1932, entitled "An Act prohibiting corporation farming and relating to corporations acquiring and holding real estate not necessary in the operation of their business."

Appeal from a judgment of the District Court of Cass County, Hon. P. G. Swenson, Judge.

Affirmed.

Opinion of the Court by Christianson, J.

Messrs. Nilles, Oehlert and Nilles of Fargo (Abbot L. Fletcher of Minneapolis of counsel), attorneys for Plaintiff and Appellant.

Messrs. Alvin C. Strutz, attorney general, William R. Pearce, special assistant attorney general, both of Bismarck, and R. F. Croal, state's attorney, of Fargo, attorneys for defendants and respondents.

Asbury Hospital v. Cass County

Christianson, J. This is a sequel to Asbury Hospital v. Cass County, 72 N. D. 359, 7 N. W. 2d 438. The former appeal involved an order sustaining a demurrer to the complaint. The order was affirmed. The action was brought in the District Court of Cass County under the Uniform Declaratory Judgments Act of this state (Chap. 237, Laws 1923, 1925 Supp. secs. 7712a1-7712a16), to secure a judicial declaration that certain real property owned by the plaintiff is not subject to the provisions of an initiative measure, adopted June 29, 1932, entitled "An act prohibiting corporation farming and relating to corporations acquiring and holding real estate not necessary in the operation of their business." (Laws 1933, pp. 494, 495,) and amended by chap. 89, Laws 1933, and chap. 111, Laws 1935.

The plaintiff is a nonprofit corporation organized under the laws of the state of Minnesota and the owner of certain land in Cass County in this state which it acquired in November 1925. The facts are set forth fully in the former opinion and need not be restated here.

In its complaint the plaintiff alleged that application of the statute in question here as against the plaintiff and its said real estate would infringe upon the violate rights guaranteed to it by Article 1, Section 10, Article 4, Section 2, and the Fifth Amendment and Section 1 of the Fourteenth Amendments to the Constitution of the United States, as well as Sections 11, 13, 16, 20 and 22 of the Constitution

of North Dakota. On a former appeal these constitutional questions were raised and were decided by the decision of this court. On this appeal, plaintiff by appropriate assignments of error has presented the same constitutional questions and they have been supported and argued both in the written briefs and on the oral argument.

After the case had been remanded to the district court, following the decision on the former appeal, the trial court made findings of fact, wherein it found the facts alleged in the amended complaint to be true. From the facts so found the court drew the following Conclusions of Law:

"1. This action was properly brought for a declaratory judgment under the Declaratory Judgments Act of this State and the facts present an actual controversy of a justiciable character between the parties having adverse interests.

2. The initiated statute of North Dakota (Laws 1933, p. 494, Sections 4 and 5, and Sections 1 and 3, as amended by Laws 1933, c. 89) requiring corporations to dispose of realty usable for agriculture, may be constitutionally applied to realty acquired before the adoption of the statute, or acquired by foreclosure of mortgage executed before the adoption of the statute.

3. Plaintiff was not brought within the statutory exception authorizing corporations to continue to hold realty usable for agriculture if 'reasonably necessary in the conduct of their business' merely because its articles of incorporation authorized it to acquire and hold realty.

4. The enforcement of said initiated measure of North Dakota against the plaintiff, would not deprive the plaintiff of its property without due process of law, or deny to it the equal protection of the law within the meaning of the Fourteenth Amendment of the Constitution of the United States.

5. Said initiated measure does not operate to impair the obligation of contract between the State and the plaintiff or impair or divest any vested property

right, and within the meaning of the Fourteenth Amendment of the Constitution of the United States and within the meaning of Article 4, Section 2 thereof.

6. The Fourteenth Amendment of the Constitution of the United States prohibits denial of equal protection of the laws only to persons within the jurisdiction of the State, and cannot be relied upon by the plaintiff in this case.

7. Plaintiff is not a citizen within the meaning of Article 4, Section 2 of the Constitution of the United States governing privileges and immunities of citizens.

8. Plaintiff could not be injured by the amendment to said law discriminating in favor of corporations as defined therein, and hence cannot urge such discrimination in claiming such statute to be unconstitutional.

9. Said initiated measure, as against the plaintiff, is not in contravention of any of the provisions of the Constitution of the United States or amendments thereto, set forth in the bill of complaint herein; neither is said legislation in violation of or in contravention of any of the provisions of the Constitution of the State of North Dakota relied upon by the plaintiff in the bill of complaint.

10. This Court having assumed jurisdiction of this case as one properly brought for a declaratory judgment and for injunctive relief, and having declared the law, now does, in accordance with such declaration, deny plaintiff's application for perpetual injunction against the defendants, prohibiting defendants and their successors in office from enforcing or attempting to enforce such legislation against the plaintiff's property."

Final judgment was entered in accordance with the findings and the conclusions and the plaintiff has appealed.

The facts is found by the trial court are precisely the same as those set forth in the complaint, which was considered on the former appeal. The same contentions were advanced on that appeal that are advanced on this appeal.

While the former appeal was from an intermediate order (Comp. Laws 1913, sec. 7832; Deveraux v. Katz, 22 N. D. 351, 133 N. W. 553; Langer v. The Courier News, 48 N. D. 280, 183 N. W. 1009) and this is an appeal from a final judgment, the decision on the former appeal became and is the law of the case. 5 C. J. S. p. 1267, et seq; Schmidt v. Beiseker, 19 N. D. 35, 120 N. W. 1096; Stimson v. Stimson, 30 N. D. 78, 152 N. W. 132; Dubs v. Northern Pacific Railway Company, 51 N. D. 113, 199 N. W. 191; Wittmayer v. Security State Bank of Upham, 57 N. D. 934, 224 N. W. 303; Anderson v. Northern & Dakota Trust Company, 67 N. D. 458, 484-485, 274 N. W. 127, 140; Pearce v. North Dakota Workmen's Compensation Bureau, 68 N. D. 318, 279 N. W. 601; Jacobson v. Mutual Benefit Health & Accident Assn., 70 N. D. 566, 296 N. W. 545.

In the decision on the former appeal, we held that the statute in question was applicable to the plaintiff and its real estate, and that the application and enforcement of the statute against the plaintiff as to the tract of land in question here will not operate to infringe upon or deny any right guaranteed to it by the several provisions of the Constitution of the United States and the Constitution of the State of North Dakota which it has invoked. We adhere to the views expressed and the principles announced in the decision on the former appeal and the determination there made of the several contentions that were advanced by the plaintiff on that appeal and that are advanced against on this appeal.

The judgment appealed from is affirmed.

A. M. Christianson,
W. L. Nuessle,
Thomas J. Burke,
James Morris,
Harvey J. Miller.
District Judge.

Mr. Justice Burr, deeming himself disqualified, did not participate, Hon. Harvey J. Miller, Judge of Sixth Judicial District, sitting in his stead by request.